IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

CRL.A.No. 530 of 1999()

CC.138/1997 of JUDL. MAGISTRATE OF FIRST CLASS-II(MOBILE), KOTTAYAM DT.19.2.99.

.....

APPELLANT: COMPLAINANT

K.T.THOMAS, THOMSON INDUSTRIES,
KIDANGOOR, PO., KOTTAYAM.

BY ADV. SRI.KOSHY GEORGE

RESPONDENTS: ACCUSED & STATE

---

1. **SUNNY THOMAS, KALATHIL AGENCIES,**
   EDATHUA P.O., THIRUVALLA.

2. **STATE OF KERALA, REP.BY**
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

BY ADV. SRI.P.F.FRANCIS
BY PUBLIC PROSECUTOR, SRI.AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 22/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R. UDAYABHANU, J.

Crl. A. No.530 of 2007

Dated 22nd June, 2007

Judgment

The Appellant is the complainant in C.C.No.138/97, the proceedings initiated with respect to the offence under section 138 N.I.Act which ended in the acquittal of the accused.

2. The case of the complainant is that a sum of Rs.7000/- was borrowed by the accused and that the impugned cheque was issued on 30-12-95 drawn on the Edathua branch of Alleppey District Co-operative bank Ltd. The cheque was presented through Federal Bank Ltd. and the same was returned un-encashed on 13-1-96 along with a memo mentioning that there is no sufficient funds in the account. Lawyer notice was sent to the accused demanding the money on 23-1-96. As there was no reply nor was the amount paid, the complainant initiated the proceedings.

3. The evidence adduced in the matter consisted of

the testimony of PW-1, the complainant and Exts.P1 to P5 and Ext.X-1. The court below dismissed the application only on the ground that clause (b) of section 138 has not been complied with as the dishonour memo was dated 6-1-96 and notice was issued on 13-1-96. It is the case of the appellant that the above finding is totally erroneous as the appellant has mentioned in the complaint, in the lawyer notice as well as in his deposition that he received intimation on 13-1-96. Hence, notice has been received within the statutory deadline of 15 days. I find that Ext.P2 dishonour memo is that of the drawee bank. The bank in which the cheque was presented is the Federal bank. Ext.X1, the ledger extract would show that the above bank received the dishonour intimation only on 13-1-96 as per the entry seen therein. In the circumstances, I find that the above finding of the court below is absolutely wrong.

4. On a consideration of the evidence adduced in the matter, I find that the execution of the cheque stands proved. The case set up by the accused is that he has not

issued any such cheque, he has no bank account and that he has not borrowed any amount when questioned under section 313 Cr.P.C. The above case stands totally disproved by Ext.P1, Ext.X1 and from the fact that no reply was sent to the lawyer notice received which is evident from Ext.P5 acknowledgment card.

5. In the circumstances, the appellant/complainant has established his case which stands proved beyond reasonable doubt that the accused is guilty of the section 138 N.IAct. The order of the court below is set aside. The accused is convicted under section 138 N.I.Act. He is sentenced to undergo imprisonment till the rising of the court and to pay a compensation of Rs.10,000/- and in default to undergo simple imprisonment for one month. The accused shall appear before the JFCM- Kottayam on 20-8-2007 to receive the sentence.

The Crl.Appeal is allowed.

Kvm/- K.R.UDAYABHANU, JUDGE.

K.R.UDAYABHANU, J.

CRL.A. 530 OF 1999

ORDER

22-6-2007.